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SUPREME COURT, U.S.

NO. 81-855

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

CHARLES ANDERSON, Warden,

Petitioner,

-vs-

CORNELL FULLER,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Respondent, CORNELL FULLER, asks leave to file the attached "Brief for the Respondent in Opposition" without prepayment of costs and to proceed in forma pauperis pursuant to Supreme Court Rule 46.1. The Respondent proceeded in forma pauperis in this manner in both the United States District Court, Eastern District of Michigan, Southern Division, and in the United States Court of Appeals for the Sixth Circuit. His financial situation has not since improved.

Respectfully submitted,

FEDERAL DEFENDER OFFICE

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Dated: December 7, 1981

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V

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Respondent.
_____/

ON PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

WHETHER THE COURT OF APPEALS AND THE DISTRICT COURT CORRECTLY HELD THAT RESPONDENT WAS ENTITLED TO HABEAS CORPUS RELIEF, WHERE, UPON THE RECORD EVIDENCE ADDUCED AT TRIAL, NO RATIONAL TRIER OF FACT COULD HAVE FOUND PROOF OF GUILT BEYOND A REASONABLE DOUBT.

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---/

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

Respondent's conviction was affirmed by the state courts in People v. Fuller, 44 Mich. App. 297, 205 N.W.2d 287 (1973) and People v. Fuller, 395 Mich. 451, 236 N.W.2d 58 (1975). (Pet. App. 40a, 31a)[1]

The opinion of the United States District Court for the Eastern District of Michigan, granting respondent's petition for a writ of habeas corpus, is unreported. (Pet. App. 20a) The opinion of the United States Court of Appeals for the Sixth Circuit, affirming this decision, is not yet reported. (Pet. App. 1a).

JURISDICTION

Respondent accepts petitioner's statement of jurisdiction.

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1. "Pet App." refers to the appendix filed by petitioner in this Court.

STATUTES INVOLVED

MCLA 750.71 (MSA 28.266) provides:

> The term 'burn' as used in this chapter shall mean setting fire to, or doing any act which results in the starting of a fire, or aiding, counseling, inducing, persuading or procuring another to do such act or acts.

MCLA 750.72 (MSA 28.267) provides:

> Any person who wilfully or maliciously burns any dwelling house, either occupied or unoccupied, or the contents thereof, whether owned by himself or another, or any building within the curtilage of such dwelling house, or the contents thereof, shall be guilty of a felony punishable by imprisonment in the state prison not more than 20 years.

MCLA 750.316 (MSA 28.548) provides:

> All murder which shall be perpetrated by means of poison, or lying in wait or any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate any arson, rape, robbery, burglary, larceny of any kind, extortion or kidnapping, shall be murder of the first degree, and shall be punished by solitary confinement at hard labor in the state prison for life.

MCLA 767.39 (MSA 28.979) provides:

> Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.

COUNTERSTATEMENT OF THE CASE

1. On the morning of May 18, 1970 a fire at a Detroit, Michigan residence claimed the lives of two young girls. Cornell Fuller, respondent herein, was charged by criminal information, filed on June 1, 1970, with the first

degree murder of one of the girls, 12-year-old Ruth Turner. The information charged that Fuller killed Ruth Turner during the perpetration of arson, in violation of MCLA 750.316.

The trial of Cornell Fuller, age 17, commenced on October 7, 1970 in the Recorder's Court for the City of Detroit. The State did not allege that Fuller started the fire or even assisted in the planning. Rather, the State theorized that Fuller was a "look-out" and thus equally guilty as the principal.[2] (C/A App. 17a-18a) See MCLA 767.39.

The testimony of a Detroit Fire Department captain established that the fire originated in the rear of the residence. It appeared the fire was deliberate and that actually two fires had been set. (C/A App. 40a-41a) A bottle with gasoline, commonly called a "Molotov Cocktail", could have been used to start the fire. (C/A App. 42a)

A Detroit Fire Department senior chemist testified that he had been able to identify leaded gasoline from debris taken from the scene of the fire. (C/A App. 43a-44a)

Detroit Police Department patrolmen testified concerning the rescue attempts they made. (C/A App. 37a-39a)

A Wayne County Morgue pathologist testified regarding his autopsy of the body of Ruth Turner; he established the fire as the cause of her death. (C/A App. 36a)

Safronia Turner, mother of the deceased girls, and her son, Steven, testified concerning events surrounding the fire. (C/A App. 59a-69a)

---

2. "C/A App" refers to the joint appendix filed in the Court of Appeals.

Jefferey Coleman, 14-years-old, was the primary prosecution witness. At the time of trial he resided in the Wayne County Youth Home because he had run away from home. Coleman testified he was in a special school, having attended regular school until "about the third grade." (C/A App. 73a, 92a-93a)

On the morning of May 18, 1970, Coleman testified, he left his home at about 8:00 a.m. and went to the home of Gary Martin. (C/A App. 70a) He next proceeded toward Stevie Turner's house, approximately seven or eight houses from Gary Martin's home. (C/A App. 75a-76a) He testified he went to the backyard of "Miss Paula's house," next door to the Turner house. (C/A App. 77a) There, according to Coleman, he saw Zerious Meadows on the porch of the Turner house with a Coca-Cola bottle in his hand. (C/A App. 78a) According to Coleman, Cornell Fuller was in the backyard standing by the gate. (C/A App. 79a)

Jefferey Coleman testified he stood and watched for five or ten minutes. (C/A App. 94a-95a) He testified that Zerious Meadows, age 16, lit a rag in the Coke bottle and threw the bottle against the porch where it broke. (C/A App. 80a) Meadows then struck a match and started a second fire on the porch. (C/A App. 83a)

The only evidence of participation by Cornell Fuller is indicated in the following testimony of Jefferey Coleman:

> Q: Now after he [Meadows] had struck the match and started the second fire, what happened then?
>
> A: Well, he had jumped off the porch and then they ran down the alley towards Kercheval.
>
> Q: When you say they ran down the alley, who ran down the alley?
>
> A: Zerious and Cornell.
>
> Q. Towards Kercheval.
>
> A: Yes, sir.

Q: During the time that Zerious Meadows was throwing the bottle against the side of the porch and lighting the match which set--started the second fire did you see what Cornell Fuller was doing?

A: He was still standing by the gate, looking around.

Q: When you say he was looking around what, exactly, was he doing?

A: I guess he was watching out for Zerious--he had looked to Jefferson and he looked back towards Kercheval.

Q: He looked towards Jefferson and looked back towards Kercheval?

A: Yes, sir.

Q: Did he do that once or more than once?

A: He did it more than once.

THE COURT: Was this the alley gate or the gate toward the front of the house:

A: It was the alley gate.

Q: How many times would you say Cornell Fuller looked towards Jefferson and then looked back towards Kercheval?

A: I wouldn't know.

Q: But it was more than once; is that correct?

A: Yes, sir.

Q: Was it more than twice?

A: Yes, sir.

Q: Now, during the time that this was taking place, Jefferey, did you hear any words spoken between Zerious and Cornell?

A: No.

Q: Did you say anything to them?

A: No.

Q: Now, after--strike that, please-after the second fire began, you testified that Zerious and Cornell left the backyard; is that correct?

A: Yes, sir.

Q: Did they enter the alley?

A: Yes, sir.

Q: Did they enter the alley through the gate that Cornell Fuller was standing by?

A: Yes, sir.

Q: Were they running together or separately, Jefferey?

A: Together.

A: And they were running towards Kercheval is that correct?

A: Yes, sir.

(C/A App. 83a-86a)

Jefferey Coleman further testified he became frightened and ran back to Gary Martin's house after the fire started. (C/A App. 86a, 96a) Subsequently, he stopped a police car, told the officers the house was on fire, and then returned to the house. (C/A App. 86a)

Helen Brownlee testified that on May 18, 1970 she lived next door to the Turner home. (C/A App. 46a) Shortly before 9:00 a.m., she saw five or six boys, ages 14, 15, or 16, "in a huddle" in front of the Turner house. (C/A App. 48a, 54a) She could not hear what was being said. (C/A App. 49a) Mrs. Brownlee identified Cornell Fuller as one of the boys she saw. (C/A App. 49a) She had seen Fuller "more than once" before with a crowd of boys playing next door.

Mrs. Brownlee testified she saw two or three of the boys, includiing Cornell Fuller, go to the back of the Turner house. (C/A App. 50a) She then saw a "shiny object" being thrown by one of the boys in the front of the house. It sounded like glass shattering. (C/A App. 51a) Mrs. Brownlee, believing a window in her own house had been broken, went outside. She found the Turner house on fire. (C/A App. 52a-53a)

Mrs. Brownlee testified she was uncertain whether Jefferey Coleman was with the five or six boys she saw huddled together. She testified she had seen him, however, three or four times earlier that morning and was positive she had seen him standing out front when she sent her children to school a few minutes before the fire started. (C/A App. 55a-57a)

A Detroit Police Department detective sergeant testified he had interviewed Mrs. Brownlee the day after the fire. She had not identified anyone at that time. The officer admitted that her in-court testimony was a surprise to him. (C/A App. 115a)

Gary Martin, age 15, testified he saw Jefferey Coleman about 8:00 a.m. on May 18, 1970. (C/A App. 100a) Several minutes after Coleman left his house, Martin saw six boys including Cornell Fuller and Zerious Meadows, walk past his house. (C/A App. 103a-105a, 114a) Martin later saw the same group coming from the opposite direction. (C/A App. 108a) First they were walking; then they began to run. (C/A App. 109a) Later, Jefferey Coleman returned to his house and reported that Stevie Turner's house was on fire. (C/A App. 112a)

Hattie Fuller, mother of Cornell Fuller, was the only defense witness. She testified her son was home sleeping until about 9:00 a.m. on the morning of May 18, 1970. (C/A App. 126a-130a)

2. At the conclusion of the state's case, a motion for directed verdict of acquittal was heard. The trial court noted, "There was very meager evidence to call him a look-out in this case" and that "there would be a high probability that the jury would return a verdict of not

guilty in this case." The court reserved ruling on the motion, however, because "we do have a borderline prima facie case in this instance." (C/A App. 120a-121a)

On October 30, 1970, prior to the sentencing of Cornell Fuller, his counsel moved to set the guilty verdict aside on the ground the evidence was insufficient to uphold the conviction. This motion was denied. (Pet. App. 43a-45a)

A motion for a new trial, founded on various grounds including the insufficiency of the evidence, was denied in an opinion and order entered on December 15, 1971. (Pet. App. 45a-47a)

3. Cornell Fuller was sentenced, on October 30, 1970, to solitary confinement at hard labor in the state prison for life. (C/A App. 146a-147a)

4. The Michigan Court of Appeals reviewed Fuller's conviction in People v. Fuller, 44 Mich. App. 297 (1973). On the question of the sufficiency of the evidence, the court stated, "Our inquiry is, was evidence produced which, if believed, could certainly lead to a reasonable inference that defendant was a party to the offense?" Id., at 299. The court affirmed the conviction. (Pet. App. 40a-43a)

5. The Michigan Supreme Court upheld Cornell Fuller's conviction in People v. Fuller, 395 Mich. 451 (1975). In apparent response to the dissent's contention that the due process clause required "proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged," and the dissent's argument that the prosecution had not negated "every reasonable theory consistent

with the defendant's innocence of the crime charged," Id., at 459-461, the majority stated: "It is for the trier of fact to determine if the prosecution has 'negate[d] every reasonable theory consistent with the defendant's innocence of the crime charged.' It was so determined in this case." Id., at 455. (Pet. App. 31a-40a).

6. On November 20, 1980, an "Order Granting Petition For A Writ Of Habeas Corpus" was entered by Chief Judge John Feikens of the United States District Court for the Eastern District of Michigan. (Pet. App. 20a-28a) In his "Memorandum Opinion," the judge discussed the evidence presented, the relevant Michigan law, and the standard of review announced in Jackson v. Virginia, 443 U.S. 307 (1979). He concluded:

> The evidence outlined above cannot constitutionally sustain a finding that the petitioner had either of the elements of intent required by Michigan law. The evidence establishes only that the petitioner was with Zerious Meadows and other boys before and after the fires were started, and that the petitioner was looking around while Meadows started them. This suggests, as Jefferey Coleman surmised, that the petitioner may have been acting as a lookout for Meadows. It is reasonable speculation. But could a rational jury find it to be proof beyond a reasonable doubt? No evidence was presented that the petitioner intended to burn the Turner home. The evidence that he knew what Zerious Meadows planned to do is simply too meager to support conviction. The state has failed to meet the constitutional burden imposed by In re Winship, and no rational jury could conclude that it succeeded.

"Memorandum Opinion" at 5-6 (Pet. App. 26a) (emphasis in original)

7. The United States Court of Appeals for the Sixth Circuit affirmed the decision of the District Court. (Pet. App. 1a-19a) After quoting the standard set forth in Jackson

v. Virginia, 443 U.S. 307, 324 (1979), the Court of Appeals stated:

> In applying this standard in habeas cases, the federal courts must review the evidence in the light most favorable to the prosecution. The petition must be denied if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." The district court recognized that conflicts in the evidence must be resolved in favor of the State, but nevertheless found that the evidence introduced at trial was too meager to support the petitioner's conviction. We agree with the district court's conclusion

Fuller v. Anderson, ___ F.2d ___ (6th Cir. 9/18/81) (slip. op. at 7) (Pet. App. 8a-9a) (citations omitted)

The Court of Appeals opinion concluded:

> The only direct evidence supporting the State's contention that Fuller "stood guard and acted as a lookout" for Zerious Meadows was Jefferey Coleman's testimony that over a period of several minutes Fuller turned his head from side to side "more than twice." We agree with the district court that this is insufficient to establish beyond a reasonable doubt that Fuller took conscious action to aid Meadows' commission of arson.

Fuller v. Anderson, supra. (slip op. at 9) (Pet. App. 11a)

8. By order of the District Court entered January 6, 1981, as affirmed by the Court of Appeals, Cornell Fuller has been released on bond pending the State's appeals. (Pet. App. 28a-31a)

REASONS FOR DENYING THE WRIT

The Court of Appeals and the District Court correctly held that respondent was entitled to habeas relief where, upon the record evidence adduced at trial, no rational trier of fact could have found proof beyond a reasonable doubt.

Petitioner contends the lower courts erred in granting respondent habeas relief. Petitioner claims there was sufficient evidence adduced at respondent's state court trial to permit a rational trier of fact to find proof beyond a reasonable doubt of aiding and abetting an arson-murder.

1. Evidence of Cornell Fuller's presence at the scene of the fire was not overwhelming. There are questions as to the credibility of each of the three witnesses who testified to having seen Cornell Fuller at or near the Turner home on the morning of the fire. Conflicts exist among the testimony of the witnesses. Additionally, Hattie Fuller testified her son was at home throughout the relevant time period.

As required by Jackson v. Virginia, 443 U.S. 307 (1979), however, the District Court and the Court of Appeals resolved all factual disputes in the light most favorable to the prosecution. The testimony of the next-door neighbor, Helen Brownlee, that she saw Cornell Fuller near the house, with several other teenage boys, was accepted by the lower courts. The testimony of 15-year-old Gary Martin, that he saw Cornell Fuller with a group of boys heading toward the Turner house and, later, walking and then running in the opposite

direction, was likewise accepted. The relevant testimony of 14-year-old Jefferey Coleman was reported verbatim in the opinions and accepted as fact by both courts.

The District Court and the Court of Appeals fully credited the State's witnesses. Both Court's nevertheless concluded that testimony that Cornell Fuller looked toward Jefferson Avenue and then looked back toward Kercheval Avenue "more than twice" (C/A App. 85a) during the five to ten minutes that Jefferey Coleman watched (C/A App. 94a-95a) was simply not sufficient for a rational factfinder to accept as proof beyond a reasonable doubt of participation in the criminal offense.

Accepting the State's evidence, Cornell Fuller was one of seven teenaged boys, including Jefferey Coleman, present at or near the Turner home at the time of the fire. He was one of seven boys, including Coleman, who ran from the house after the fire started.

There was no evidence Cornell Fuller planned the arson. There was no evidence he furnished or ever possessed the gasoline, coke bottle, rag, or matches used to ignite the fire. There was no evidence he assisted in the arson. There was no evidence he in any way encouraged the commission of the arson. Likewise, there was no evidence he knew any member of the Turner family or that he had any motive to harm any member of the family or their residence.

The crux of the case against Cornell Fuller was the testimony of Jefferey Coleman that Fuller looked back forth "more than twice." According to the State, this testimony established him as a "look-out." This conclusion, without further evidentiary support, is pure conjecture. It falls far short of the proof beyond a reasonable doubt constitutionally required to support the conviction of Cornell Fuller for the crime alleged.

2. In a prosecution for felony-murder in the State of Michigan, the felony must be proved independently of the murder. People v. Allen, 39 Mich. App. 483, 499 (1972) (Levin, P.J., dissenting) adopted 390 Mich. 383 (1973). To establish the charge that murder was committed in the perpetration of an arson, the prosecution must prove that a building was burned, that the fire was intentionally or willfully set, and that a person died as a result of the fire. Peterson v. Oceana Circuit Judge, 243 Mich. 215, 217 (1928); People v. Belcher, 29 Mich. App. 341, 343 (1971); MCLA 750.72.

A defendant, to be an aider and abettor, to an offense, under Michigan law, must know that the activity condemned by the law is actually occurring and must intend to help the perpetrator. "Mere presence, even with knowledge that an offense is about to be committed or is being committed, is not enough to make a person an aider and abettor or a principal in the second degree nor is mere mental approval, sufficient, nor passive acquiescence or consent." People v. Burrel, 253 Mich. 321, 323 (1931), quoting 1 Cyc. Crim. Law (Brill), § 233; People v. Casper, 25 Mich. App. 1, 5 (1970).

One aids and abets another in committing a crime when the former takes conscious action to make the criminal venture succed. People v. Cooper, 326 Mich. 514 (1950); People v. Gordon, 60 Mich. App. 412, 418 (1975). The aider and abettor of a specific intent crime must be shown to have rendered his aid and assistance to the principal actor with the knowledge that the principal himself possessed the intent necessary to be guilty of the crime. People v. Rigsby, 92 Mich. App. 95, 97-98 (1979); People v. Gordon, supra; People v. Poplar, 20 Mich. App. 132 (1969).

In summary, to be guilty of aiding and abetting a specific intent crime, such as arson, it is not enough for

the prosecution to establish that the defendant was present and mentally approved of the offense. Nor is it sufficient to prove that the defendant rendered assistance without proof of intent or knowledge. The prosecutor must establish that the defendant both (1) took conscious action to seek to make the criminal action succeed, and (2) rendered such aid with the specific intent to commit the crime or with knowledge that the principal had such a specific intent.

Here, the prosecution failed to establish either element required to prove that Cornell Fuller was an aider and abettor. There was insufficient evidence for a rational fact-finder to conclude beyond a reasonable doubt that Cornell Fuller rendered any aid or assistance to the crime. The State's speculation that Fuller would have assisted, if necessary, and that he intented to assist, if necessary, is no substitute for proof of guilt beyond a reasonable doubt.

3. In Jackson v. Virginia, supra, this Court noted that if a state appellate court invoked the proper standard in considering a claim of insufficient evidence, its determination would not "totally bar a properly presented claim" under § 2254 but would be "entitled to great weight." Id. at 575, n.15. Petitioner, relying on language in the majority opinion of the Michigan Supreme Court, argues that "a standard of review even more strict than is required by the Constitution" was applied by the state court. (Pet. Cert. at 12) Review of the Michigan law governing the standard of review on sufficiency of the evidence questions, however, as well as review of the state courts' decisions in this case, including that of the Michigan Supreme Court, establishes that none of the Michigan courts, in considering the sufficiency of the evidence to support Cornell Fuller's conviction, applied a standard

as strict as that held to be required by this Court in Jackson v. Virginia.

A review of Michigan case law both before and after the Fuller decisions establishes that the standard of review applied to claims of insufficiency of the evidence was not as strict as that required by Jackson v. Virginia. A Michigan appellate court tested the merits of the denial of a motion for a directed verdict by taking the evidence presented by the prosecution in the light most favorable to the prosecution and determining if there was any evidence upon which the trier of fact could predicate a finding of guilt. See, e.g., People v. Garcia, 398 Mich. 250, 256 (1976); People v. Johnson, 397 Mich. 686, 687 (1976); People v. Vail, 393 Mich. 460 (1975); People v. Abernathy, 253 Mich. 583, 587 (1931).

In People v. Hampton, 407 Mich. 354 (1979), the Michigan Supreme Court, applying this Court's decision in Jackson v. Virginia, expressly abandoned the "any evidence" rule. Hampton, however, was decided long after the state courts had considered the conviction of Cornell Fuller, presumably under the previous "any evidence" standard.

Even applying the old standard, the judge presiding at Cornell Fuller's trial, in considering the motion for a directed verdict, stated, "The question in this case is a close one." The trial court stated: "There was very meager evidence to call him a look-out in this particular case; however, the Court is of the impression that we do have a borderline prima facie case in this instance--a borderline prima facie case--and, accordingly, the court will reserve its ruling on the motion for a directed verdict." (C/A App. 121a)

Likewise, the Michigan Court of Appeals did not apply a standard comparable to that required by Jackson v. Virginia: "Our inquiry is, was evidence produced which, if

believed, could certainly lead to a reasonable inference that defendant was a party to the offense." People v. Fuller, 44 Mich. App. 297, 299.

In the Michigan Supreme Court, the dissenting justices argued there was insufficient evidence to establish the guilt of Cornell Fuller beyond a reasonable doubt:

> There are simply too many inferences that would have to be drawn, one piled upon another, to justify conviction of this defendant. The prosecution has not negated "every reasonable theory consistent with the defendant's innocence of the crime charged". The due process clause "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged". In re Winship, 397 US 358, 364; 90 S.Ct 1068; 24 L.Ed.2d 368 (1970).
>
> People v. Fuller, 395 Mich. 451, 459-460 (1975) (T.G. Kavanaugh, C.J., dissenting).

The majority disagreed:

> It is for the trier for fact to determine if the prosecution has "negate[d] every reasonably theory consistent with the defendant's innocence of the crime charged." It was so determined in this case.
>
> People v. Fuller, 395 Mich. 455. (Emphasis supplied.)

The majority opinion of the Michigan Supreme Court did not apply "a standard of review even more strict than is required by the Constitution," as contended by petitioner. Rather, the majority concluded that the question of Cornell Fuller's guilt, having been determined by the jury, would not be considered by the court.

It was not until Cornell Fuller's petition for a writ of habeas corpus was filed that any court viewed the evidence at his trial to determine if it was sufficient to permit any rational trier of fact to find proof beyond a reasonable doubt. The District Court and, later, the Court

of Appeals, determined the evidence fell short of the standard required by the Constitution.

4. Petitioner emphasizes the fact Cornell Fuller's trial attorney denied his client was at the scene of the fire. In his opening statement he told the jury the "only question" was "whether or not the defendant, in fact, was the party standing at the scene." (C/A App. 34a) Pet. Cert. at 4-5, 11-12.

The statement of the trial counsel may explain how a jury could return a guilty verdict in this case. It does not excuse the prosecution's failure to produce evidence of guilt beyond a reasonable doubt. In Michigan, once a plea of not guilty is entered, unless the defendant--not his counsel--tenders an understanding waiver, the defendant has an absolute right to a jury determination of all of the elements of the offense charged. See People v. Reed, 393 Mich. 342 (1975); People v. Allenworth, 401 Mich. 67 (1977).

Petitioner's argument, although not explicitly stated, appears to be that, given Cornell Fuller's defense counsel's opening statement, relief should be denied if there was evidence from which a rational jury could have found, beyond a reasonable doubt, that Cornell Fuller was at the scene. This argument lacks support from any of the courts which have considered this case. No court, state or federal, has relied on the opening statement of trial counsel and none has suggested the prosecution was relieved of its burden of establishing all elements of the offense.

5. The Constitutional stature of the reasonable doubt standard was made explicit for the first time by this Court's holding "that the Due Process Clause protects the accused

against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358, 264 (1970).

Jackson v. Virginia, 443 U.S. 307 (1979), held that a state court conviction could not withstand constitutional scrutiny if it was not supported by proof beyond a reasonable doubt. The Court stated (Id. at 324):

> We hold that in a challenge to a state criminal conviction brought under 28 U.S.C. § 2254--if the settled procedural prerequisites for such a claim have otherwise been satisfied-the applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt.

Applying the Jackson standard to the record evidence adduced at the trial of Cornell Fuller, the District Court found that the conviction could not be sustained. The court recognized and applied the requirement that conflicts in the evidence be resolved in favor of the State. The court found, however, that, in the light most favorable to the prosecution, the evidence of guilt was too meager to support Cornell Fuller's conviction:

> The evidence outlined above cannot constitutionally sustain a finding that the petitioner had either of the elements of intent required by Michigan law. The evidence establishes only that the petitioner was with Zerious Meadows and other boys before and after the fires were started, and that the petitioner was looking around while Meadows started them. This suggests as Jefferey Coleman surmised, that the petitioner may have been acting as a lookout for Meadows. It is reasonable speculation. But could a rational jury find it to be proof beyond a reasonable doubt? No evidence was presented that the petitioner intended to burn the Turner home. The evidence that he knew what Zerious Meadows planned to do is simply too meager to support conviction. The state has failed to meed the constitutional burden imposed by In re Winship, and no rational jury could conclude that it succeeded. (Pet. App. 26a)

The Court of Appeals agreed that the State's evidence in this case was simply too meager to support a conviction:

> The only direct evidence supporting the State's contention that Fuller "stood guard and acted as a lookout" for Zerious Meadows was Jefferey Coleman's testimony that over a period of several minutes Fuller turned his head from side to side "more than twice". We agree with the district court that this is insufficient to establish beyond a reasonable doubt that Fuller took conscious action to aid Meadows' commission of arson. (Pet. App. 11a)

Both lower courts, having carefully considered the record evidence as required by Jackson v. Virginia, correctly concluded that the conviction of Cornell Fuller could not withstand constitutional scrutiny.

CONCLUSION

This case presents no important question of federal law requiring settlement by this Court. The decision below was required by the record in this case. It was reached using correct legal principles, is not in conflict with any other decision, and is dependent solely upon its own unique facts.

RELIEF REQUESTED

The petition for a writ of certiorari should be denied.

Respectfully submitted,

FEDERAL DEFENDER OFFICE

KENNETH R. SASSE, P24365
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600 Woodward Avenue
Detroit, Michigan 48226

Dated: December 7, 1981

NO. 81-855

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

CHARLES ANDERSON, Warden,

Petitioner

-vs-

CORNELL FULLER,

Respondent.

CERTIFICATE OF SERVICE

KENNETH R. SASSE, in compliance with Supreme Court Rule 28.4(a) and 28.5(b) does hereby certify that he is a member of the Bar of the Supreme Court and that on the 7th day of December, 1981, did deposit in the United States mail with postage fully prepaid, one (1) copy of the Brief for Respondent In Opposition and attached Motion for Leave to Proceed in Forma Pauperis, addressed to Thomas L. Casey, Assistant Attorney General 525 West Ottawa Street, 762 Law Building, Lansing, Michigan 48913.

Kenneth R. Sasse

KENNETH R. SASSE

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CERTIFICATE OF FILING

KENNETH R. SASSE, in compliance with Supreme Court Rule 28.2, does hereby certify that he is a member of the Bar of the Supreme Court, and that on the 7th day of December, the "Brief for the Respondent in Opposition" and attached "Motion for Leave to Proceed in Forma Pauperis," in the above-captioned case, addressed to Clerk, Supreme Court of the United States, Washington, D.C. 20543, with first-class postage prepaid, was deposited in a United States mailbox in Detroit, Michigan.

Kenneth R. Sasse
KENNETH R. SASSE

Subscribed and sworn to before me
this 7th day of December, 1981

Peggy Marie Davis
PEGGY MARIE DAVIS, Notary Public
Wayne County, Michigan
My Commission Expires: June 18, 1985